

REMARKS

Premature Final Rejection

Reconsideration and withdrawal of the Final Rejection as being premature is requested because the instant Office Action for the first time gave a new interpretation to the prior art Potter reference and new application thereof to claims 23-27 both of which are believed to be incorrect for the reasons explained below. In all fairness, applicants should have at least one opportunity to respond to this new interpretation of the Potter reference and to amend the claims in response thereto.

Accordingly, reconsideration and withdrawal of the finality of the instant Office Action is requested pursuant to M.P.E.P. 706.07(d) & (e).

The Rejections

Claims 23-27 were rejected under §102(b) as being anticipated by a new interpretation of Potter newly applied to these claims. Claims 9-12 and 22-27 were also rejected under §103(a) as being unpatentable over Van Schaftingen in view of Gerard.

Potter U.S. Publication 2002/0063129

The Potter Publication is now U.S. Patent 6,860,398. Both disclose a gas tank 10 with a multi-layer common wall 12 having a vapor barrier layer 51 received between inner and outer layers 50. A fuel spud 14 attached thereto and formed by a preformed component 20 attached to the outer layer 50 of the tank (Fig. 6) and through which a preformed inner annular component 40 is telescopically inserted and received. The outer component 20 is preferably formed of HDPE and the inner component may be formed of

HDPE or acetal. When forming the tank, the preformed outer component 20 is inserted in a mold, then the tank wall 12 is vacuum formed or blow molded over the inside face of the flange 22 of the outer component 20, then while the tank wall is still of sufficient temperature to be readily moldable, the inner component 40 is placed against the inside of the tank wall and pushed into the outer component 20. As shown in Figs. 6 and 7, this causes the portion 48 of the tank wall including its vapor barrier layer 51 to be received and compressed between the inner and outer annular components 20 and 40 as shown in Fig. 6 and 7.

Van Schaftingen 6,843,267

Van Schaftingen simply discloses, in Fig. 3, a fuel tank with a multi-layer wall 4 with two separate holes through which an ORVR valve 9 and a pipette 11 are respectively received and an overlying plate 1 of a multi-layer plastic is received and welded to the tank wall. An outgassing pipette 10 extends through and is welded to the plate 1 and typically connected to a carbon canister.

Gerard U.S. Publication 2005/0067415

Gerard discloses, in Figs. 1 and 2, both a multi-layer fuel tank 4 with a through hole through which an accessory 1, 101 is received and an overlying three layer thin and flexible barrier film 9, 109 which is laser welded to only the tank wall around its periphery.

Amended Claim 23 is Novel

Amended claim 23 defines a fuel tank having, among other things, a separate fuel fill nipple which

1. is in one piece,
2. has a polymeric vapor barrier layer adhered to polymer inner and outer layers,
3. the vapor barrier layer is of a different polymer than both the inner and outer layers,
4. the fill nipple vapor barrier layer is separate from the shell vapor barrier layer,
5. the fill nipple vapor barrier layer overlies the shell vapor barrier layer to provide two vapor barrier layers along the entire extent of the overlap of the nipple and the shell, and
6. the two overlapped layers are spaced apart circumferentially continuously around the opening of the shell.

Since Potter does not disclose any of these elements, much less all of them, claim 23 is not anticipated by and is novel over Potter. Contrary to the contention in the instant Office Action, Potter does not teach a fuel tank vapor barrier layer overlapped with a fill nipple vapor barrier layer to provide two barrier layers at all, two spaced-apart barrier layers at all, or two barrier layers spaced apart throughout the entire circumferential extent of the overlap of the fill nipple and tank shell. Rather, Potter discloses a portion of a single vapor barrier layer 51 of the tank wall extending between separate inner and outer annular components 20 and 40 telescoped together to form a fill nipple. Contrary to the contention in the instant Office Action, the cross-sectional area encircled by the

Examiner does not have two vapor barrier layers at all but rather only one vapor barrier layer 51 of the tank wall and most certainly does not have two separate vapor barrier layers, namely, a tank vapor barrier layer and a fill nipple vapor barrier layer overlapped at all, much less the specific construction and configuration called for by amended claim 23. Contrary to the contention in the Office Action, the “flange 22” is not a “vapor barrier layer” since it is made of HDPE. Accordingly, it is submitted that a person of ordinary skill in the art would not interpret Potter in the manner set forth in the instant Office Action, that such interpretation is wrong, that a person skilled in the art would not interpret the currently amended claim 23 or prior claim 23 in the manner set forth in the instant Office Action and that such interpretation is wrong.

Accordingly, for at least these reasons, amended claim 23 is not anticipated by and defines novel subject matter over Potter. Claim 23 also defines patentable subject matter over Potter, whether considered alone or in combination with the Van Schaftinken or Gerard references for at least these reason and should be allowed.

Claims 24 and 25

Each of claims 24 and 25 is directly dependent on amended claim 23 and hence, regardless of their individual merits, defines novel and patentable subject matter over Potter for at least the foregoing reasons for which amended independent claim 23 does so and should be allowed.

Claim 26 is Novel

As amended, claim 26 may be broader in some respects and narrower in others than amended claim 23 but is not anticipated by and defines novel and patentable subject matter over Potter for at least substantially the same reasons noted above for which claim 23 does so.

Moreover, claim 26 further calls for a separate cover having a polymeric barrier layer between inner and outer layers of a different polymer, spanning the area of attachment of the fill nipple to the shell and being circumferentially continuously welded to the fill nipple and to the shell around the fill nipple and the opening to the shell. Since Potter does not disclose any cover at all, much less this specific construction and arrangement, amended claim 26 is novel and patentable over Potter for at least this additional reason alone as well as the reasons above for which amended claim 23 is novel and patentable over Potter.

Claim 27 is Novel

Amended claim 27 may be broader in some respects and narrower in others than amended claim 23 but is believed to be not anticipated by Potter and defines novel and patentable subject matter over Potter for at least substantially the foregoing reasons for which amended claim 23 does so and should be allowed.

§103 Rejection

The instant Office Action rejected claims 9-12 and 22-27 under §103 as being unpatentable over Van Schaftingen in view of Gerard although it did not specifically

apply these references to any of claims 22-27 or state any reasons as to why claims 22-27 are allegedly unpatentable under §103(a).

Claim 23 Defines Patentable Subject Matter

The proposed combination of Van Schaftingen and Gerard does not disclose, suggest, teach or make obvious to persons of ordinary skill the subject matter as a whole of the specific construction and arrangement defined by amended claim 23 for at least the following reasons. Van Schaftingen, whether considered alone or in combination with Gerard, does not disclose, suggest, teach or make obvious to skilled persons either the basic concept, specific construction and arrangement defined by amended claim 23 or its subject matter as a whole of a fuel tank having a shell of a first polymeric material and a vapor barrier layer of a different second polymeric material adhered to the first polymeric material and a separate one-piece fuel fill nipple with a vapor barrier layer of a polymeric material different from and received between and adhered to inner and outer layers of a polymeric material with the fill nipple separate barrier layer overlying the shell barrier layer along the entire extent of the overlap of the fill nipple with the shell to provide at least two vapor barrier layers extending along the entire extent of the overlap of the nipple and shell and with the vapor barrier layers being spaced apart circumferentially continuously around the opening of the shell, and with the shell first polymeric material and the adjacent layer of the nipple being of the same polymeric material and welded together circumferentially continuously around the opening of the shell. Undisputedly, Van Schaftingen does not disclose or teach any fuel fill nipple at all, much less applicants' one-piece fuel fill nipple formed with a passage aligned with the shell

opening to allow fuel to flow through the passage and into the interior of the shell nor applicants' specific construction and arrangement attaching the fill nipple to the shell to produce two overlying and spaced-apart vapor barrier layers each extending circumferentially continuously around the opening through the shell.

Contrary to the contention in the Office Action, the construction of Fig. 3 of Van Schaftingen does not disclose, suggest or teach any such construction and arrangement. Indeed, Van Schaftingen teaches away from such a construction by disclosing a plate overlying two accessories mounted through separate tank holes, at most having two vapor barrier layers extending only part way around the tank opening and only a small degassing pipette projecting through the plate and only into a cavity (for vapor accumulation) defined between the plate and the upper face of the tank wall. Similarly, Gerard does not overcome the deficiencies of Van Schaftingen and teaches away from applicants' specific construction and arrangement defined by amended claim 23 since it does not disclose any fuel fill nipple at all but rather a fuel tank with various accessories extending through a hole in the tank wall and having a flexible vapor barrier welded to only the tank wall. The form of Fig. 2 shows a plate 101 attached by a ring nut assembly 104 around a hole 102 through the tank with a siphon tube 107 opening through the plate 101 and a thin and flexible barrier film 109 with a seal 110 such as an O-ring between the plate and the fitting 108 received on the tube 107.

Furthermore, neither of these references nor the skill of the art contain any suggestion or teaching as to which of their numerous elements should be discarded and which selected, rearranged and recombined with elements not disclosed by the cited references in order to achieve applicants' specific construction and arrangement as

defined by amended claim 23 and its significant practical advantages including essentially eliminating all hydrocarbon fuel emissions from a plastic fuel tank and its fuel filler neck and connection to the tank.

Furthermore, for at least these reasons, it appears that these references have been selected, interpreted and their combination proposed utilizing the teachings of applicants' invention which use of hindsight is impermissible and expressly precluded in determining patentability under §103. Accordingly, for at least these reasons, amended claim 23 defines patentable subject matter under §103 over Van Schaftingen in view of Gerard and should be allowed.

Claims 24 and 25

Claims 24 and 25 are dependent on amended claim 23 and hence define patentable subject matter under §103 over the proposed combination of the Van Schaftingen and Gerard references for at least the reasons for which claim 23 does so and should be allowed.

Amended Claim 26 is Patentable

While amended claim 26 may be broader in some respects and narrower in others than amended claim 23, it is believed to define patentable subject matter over the Van Schaftingen and Gerard references for at least the foregoing reasons for which claim 23 does so. Moreover, claim 26 also calls for a separate cover having a polymeric vapor barrier layer received between and adhered to inner and outer polymeric layers of a polymer different than the polymer barrier layer, spanning the area of the weld

attachment of the fill nipple to the shell and being welded to the fill nipple circumferentially continuously around the fill nipple and welded to the shell circumferentially continuously around the fill nipple and the opening through the shell. This specific separate cover construction and arrangement in combination with the other elements of claim 26 is not disclosed, suggested or taught to persons of ordinary skill in view of the proposed combination of the Van Schaftingen and Gerard references, neither of which have, disclose or teach any fuel fill nipple at all or any cover overlying any attachment of a fuel fill nipple to the shell or any cover being attached circumferentially continuously to both the cover and the shell. Accordingly, claim 26 defines patentable subject matter under §103 over the Van Schaftingen and Gerard references for at least these additional reasons as well as the reasons set forth above with respect to claim 23 and should be allowed.

Amended Claim 27 is Patentable

While amended claim 27 may be broader in some respects and narrower in others than amended claim 23, it is believed to define patentable subject matter under §103 over the Van Schaftingen and Gerard references whether considered alone or in combination for at least the foregoing reasons for which amended claim 23 does so and should be allowed.

Amended Claim 9 is Patentable

While as amended independent claim 9 may be narrow in some respects and broader in others than amended claim 26, it is believed to define patentable subject matter

under §103 over the proposed combination of the Van Schaftingen and Gerard patents for at least the reasons noted above for which claims 23 and 26 do so and should be allowed.

Claims 10-12 & 22 are Patentable

Each of claims 10-12 and 22 is ultimately dependent on amended claim 9 and without regard to their individual merit defines novel and patentable subject matter under §103 over the proposed combination of the Van Schaftingen and Gerard references for at least the reasons for which claim 9 does so and should be allowed.

Entry of Amendments for Appeal

Pursuant to 37 CFR 1.116(b)(2), it is requested that the foregoing amendments to the claims be entered at least for the purposes of any necessary appeal. Entry of these amendments would simplify and clarify the issues for appeal. Furthermore, applicants should not be required to file another Request for Continued Examination simply to place all the claims in a condition for appeal, particularly since these amendments are responsive to a new and incorrect interpretation of the Potter reference and a new and incorrect interpretation and application of the references to the claims.

Supplemental IDS

A Supplemental Information Disclosure Statement is being filed herewith listing references cited in the CIP application, Ser. No. 10/999,455, in which the elected claims are directed to a method of making a fuel fill nipple. These references are believed to be

no more pertinent than those already cited in this application. The fee for filing the IDS at this time is being charged to a credit card.

Conclusion

As amended, all of the elected claims 9-12 and 22-27 are believed to now define novel and patentable subject matter over the cited and applied references of record whether considered alone or in combination and to be in a proper form and condition for allowance and such actions respectfully requested.

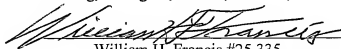
If, after considering this Response, the Examiner is of the view that any of the claims are not in a condition for allowance, a telephone interview with applicants' undersigned attorney William Francis is requested so that immediate consideration can be given to any further amendments suggested by the Examiner or otherwise needed to place all the claims in a condition for allowance. The Examiner is asked to initiate this interview by telephoning William Francis at (248) 689-3500, Ext. 153, who normally can be reached between 9:00 A.M. and 5:00 P.M. Monday through Friday.

No additional fees are believed to be due because of this Response other than the IDS fee. However, if the Patent Office determines that any fees are due because of this response, it is hereby requested that they be charged to our Deposit Account No. 50-0852.

Respectfully submitted,

Reising, Ethington, Barnes, Kisselle, P.C.

March 6, 2009

A handwritten signature in dark ink, appearing to read "William H. Francis", is written over a horizontal line.

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